

REMARKS/ARGUMENTS

Claims 18-24 and 38 are presently pending in this application. Claims 25-37 have been withdrawn.

All pending claims 18-24 and 38 were rejected for anticipation by Lapanashvili (WO 01/13990) because it discloses all features recited in the pending claims.

This application was originally filed with a defective priority claim because initially applicants inadvertently only claimed the priority of European application No. 03025661.4 filed November 7, 2003. In the first Office Action dated December 27, 2007, all claims were rejected for anticipation over the same Lapanashvili reference (WO 01/13990), at which time applicants discovered the defective priority claim.

On February 2, 2008, applicants filed a Petition to correct and complete the priority claim. In a Decision dated April 27, 2009 the Petition was granted. A copy of the Decision is attached hereto for the Examiner's convenience.

The Decision grants applicants the priority claim set forth in the Supplemental ADS. A copy of the Supplemental ADS is attached.

As can be seen from the attached Supplemental ADS, applicants are entitled to and do claim the earliest priority claimed in Lapanashvili WO 01/13990, namely U.S. application No. 09/378,181 filed August 20, 1999.

Applicants' priority date of August 20, 1999 predates the August 14, 2000 filing date of Lapanashvili WO 01/13990, thereby eliminating Lapanashvili as an effective prior art reference against this application.

In view thereof, applicants request that the Section 102 rejection of all pending claims be retracted.

Applicants herewith make of record a telephone conversation between Examiner Lavert and the undersigned on or about June 30, 2009 during which the undersigned informed the Examiner of the Decision discussed above granting applicants the above-discussed priorities with an earliest priority date of August 20, 1999. The Examiner seemed to indicate that the

current Office Action was prepared prior to the Decision, and in the course of the discussions the Examiner mentioned her belief that not all of the claims are supported by the applied Lapanashvili reference (WO 01/13990) without identifying these claims. In contrast to this, at Section 2 of the latest Office Action, the Examiner expressly recites that all of the features of the present set of claims, including particularly independent claim 18, are disclosed in the Lapanashvili reference (WO 01/13990) and, as a result thereof, rejected all claims, including independent claim 18, for anticipation by Lapanashvili.

Although no objection is of record which claims might not be supported by Lapanashvili (WO 01/13990), the European attorney of applicants and the undersigned reviewed the pending claims and compared them to the disclosures in Lapanashvili (WO 01/13990) and found that each of the pending claims 18-24 and 38 is entitled to the benefit of the Lapanashvili application because the application discloses the subject matter of the pending claims in the manner provided by Section 112, first paragraph, as required by 35 U.S.C. 120 and MPEP §201.11(B).

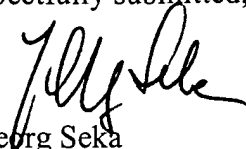
In view thereof, applicants submit that all claims are allowable and request official notification thereof at an early date.

In the event any of the pending claims are considered not supported by the disclosure in Lapanashvili (WO 01/13990), applicants request a new Office Action which is not a final rejection, setting forth which claims, and in particular which portions thereof, are believed to be not supported by Lapanashvili (WO 01/13990) so that applicants can respond thereto.

In this context, applicants note the Examiner's Response to Arguments section in the above-referenced Office Action and the comment that "WO 2001/13990 is not an effective prior art reference against the present application because the filing date of Lapanashvili is August 14, 2000, which does not beat the priority date of August 20, 1999 set forth by the application 09/378,181 (see ADS)." The precise meaning of this comment is not clear to applicants. However, applicants agree that Lapanashvili WO 01/13990 does not beat the earlier filing date of U.S. application No. 09/378,181 in view of the Decision granting applicants' full priority rights.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (415) 576-0200.

Respectfully submitted,



J. Georg Seka
Reg. No. 24,491

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: (415) 576-0200
Fax: (415) 576-0300
JGS:jhw
62130217 v1

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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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OFFICE OF PETITIONS

In re Application of :
Larry Lapanashvili, et. al. :
Application No. 10/578,585 : **DECISION ON PETITIONS**
Filed: March 2, 2007 : **UNDER 37 CFR 1.78(a)(3)**
Attorney Docket No. 081553-000000US :

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed July 31, 2008 and supplemented on August 12, 2008, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed nonprovisional and PCT applications, as set forth in the concurrently filed Application Data Sheet (ADS).

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. §§ 120 and 365(c) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the application is entitled to the benefit of the prior-filed applications. In order for the application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

This application is being forwarded to the examiner of Technology Center Art Unit 3762 for consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed applications.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

/Andrea M. Smith/
Andrea Smith
Petitions Examiner
Office of Petitions



Supplemental Application Data Sheet

Application Information

Application number:: 10/578,585
Filing Date:: 03/02/07
Application Type:: Regular
Subject Matter:: Utility
Title:: Counter Pulsation Electrotherapy Apparatus
For Treating A Person Or A Mammal
Attorney Docket Number:: 081553-000000US
Request for Early Publication:: No
Request for Non-Publication:: No
Total Drawing Sheets:: 9
Small Entity?:: Yes
Petition included?:: No Yes
Petition Type:: Petition for Unintentionally Delayed Priority
Claim
Secrecy Order in Parent Appl.: No

Applicant Information

Applicant Authority Type:: Inventor
Primary Citizenship Country:: Georgia
Status:: Full Capacity
Given Name:: Larry
Family Name:: LAPANASHVILI
City of Residence:: Winterthur
Country of Residence:: Switzerland
Street of Mailing Address:: Im Grafenhag 38
City of Mailing Address:: Winterthur
Country of mailing address:: Switzerland
Postal or Zip Code of mailing address:: CH-8404

Applicant Authority Type:: Inventor
Primary Citizenship Country:: Switzerland
Status:: Full Capacity
Given Name:: Christian
Family Name:: STUERZINGER
City of Residence:: Winterthur
Country of Residence:: Switzerland
Street of Mailing Address:: Bungertweg 14
City of Mailing Address:: Winterthur
Country of mailing address:: Switzerland
Postal or Zip Code of mailing address:: CH-8408

Applicant Authority Type:: Inventor
Primary Citizenship Country:: Switzerland
Status:: Full Capacity
Given Name:: Alexander
Middle Name:: G.
Family Name:: SULZER
City of Residence:: Zuerich
Country of Residence:: Switzerland
Street of Mailing Address:: Hegbachstrasse 2
City of Mailing Address:: Zuerich
Country of mailing address:: Switzerland
Postal or Zip Code of mailing address:: CH-8032

Correspondence Information

Correspondence Customer Number:: 20350

Representative Information

Representative Customer Number:: 20350

Domestic Priority Information

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
<u>this application</u> <u>(No. 10/578,585)</u>	<u>continuation-in-part</u>	<u>10/069,333</u>	<u>July 15, 2002</u>
<u>10/069,333</u>	<u>371 application</u>	<u>PCT/EP00/07933</u>	<u>August 14, 2000</u>
<u>PCT/EP00/07933</u>	<u>continuation-in-part</u>	<u>09/378,181</u>	<u>August 20, 1999</u>

Foreign Priority Information

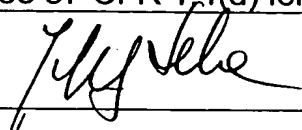
Country::	Application number::	Filing Date::
Europe	03025661.4	11/07/03
PCT	PCT/EP04/012618	11/08/04

Assignee Information

Assignee Name::	Coral Licensing International Ltd. <u>CardioLa Ltd.</u>
Street of mailing address::	International Trust Building, Wickhams Cay, P.O. Box 659 <u>Hermannstrasse 18</u>
City of mailing address::	Road Town <u>Winterthur</u>
State or Province of mailing address::	Tortola
Country of mailing address::	BRITISH VIRGIN ISLANDS <u>Switzerland</u>
Postal or Zip Code of mailing address::	<u>CH-8400</u>

Signature:

A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.

Signature:

Date: February 4, 2008

First Name: J. Georg

Last Name: Seka

Registration No. 24,491